

Message

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**From:** Thrift, Mike [thrift.mike@epa.gov]  
**Sent:** 8/20/2019 8:25:35 PM  
**To:** Conrad, Daniel [conrad.daniel@epa.gov]  
**CC:** Smith, Kristi [Smith.Kristi@epa.gov]; Carrillo, Andrea [Carrillo.Andrea@epa.gov]  
**Subject:** RE: Notice of Intent Under 42 U.S.C. § 7604(b)(2); Failure to Issue a Finding of Failure to Submit a Nonattainment State Implementation Plan

## Ex. 5 Attorney Client (AC)

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**From:** Conrad, Daniel <conrad.daniel@epa.gov>  
**Sent:** Tuesday, August 20, 2019 1:17 PM  
**To:** Thrift, Mike <thrift.mike@epa.gov>  
**Cc:** Smith, Kristi <Smith.Kristi@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>  
**Subject:** RE: Notice of Intent Under 42 U.S.C. § 7604(b)(2); Failure to Issue a Finding of Failure to Submit a Nonattainment State Implementation Plan

## Ex. 5 Attorney Client (AC)

Daniel H. Conrad  
U.S. Environmental Protection Agency  
Office of General Counsel  
Air and Radiation Law Office  
(202) 564-0903

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**From:** Thrift, Mike <thrift.mike@epa.gov>  
**Sent:** Tuesday, August 20, 2019 4:09 PM  
**To:** Conrad, Daniel <conrad.daniel@epa.gov>  
**Cc:** Smith, Kristi <Smith.Kristi@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>  
**Subject:** RE: Notice of Intent Under 42 U.S.C. § 7604(b)(2); Failure to Issue a Finding of Failure to Submit a Nonattainment State Implementation Plan

## Ex. 5 Attorney Client (AC)

# Ex. 5 Attorney Client (AC)

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**From:** Conrad, Daniel <[conrad.daniel@epa.gov](mailto:conrad.daniel@epa.gov)>  
**Sent:** Tuesday, August 20, 2019 12:53 PM  
**To:** Thrift, Mike <[thrift.mike@epa.gov](mailto:thrift.mike@epa.gov)>  
**Subject:** FW: Notice of Intent Under 42 U.S.C. § 7604(b)(2); Failure to Issue a Finding of Failure to Submit a Nonattainment State Implementation Plan

I'll take care of the e-mail.

Daniel H. Conrad  
U.S. Environmental Protection Agency  
Office of General Counsel  
Air and Radiation Law Office  
(202) 564-0903

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**From:** Smith, Kristi <[Smith.Kristi@epa.gov](mailto:Smith.Kristi@epa.gov)>  
**Sent:** Tuesday, August 20, 2019 3:41 PM  
**To:** Conrad, Daniel <[conrad.daniel@epa.gov](mailto:conrad.daniel@epa.gov)>  
**Subject:** FW: Notice of Intent Under 42 U.S.C. § 7604(b)(2); Failure to Issue a Finding of Failure to Submit a Nonattainment State Implementation Plan

Kristi M. Smith \* Assistant General Counsel for the NAAQS Implementation Group \* Air & Radiation Law Office \* US EPA, Office of General Counsel \* [smith.kristi@epa.gov](mailto:smith.kristi@epa.gov) \* (202) 564-3068 \*

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**From:** Carrillo, Andrea <[Carrillo.Andrea@epa.gov](mailto:Carrillo.Andrea@epa.gov)>  
**Sent:** Tuesday, August 20, 2019 3:02 PM  
**To:** Thrift, Mike <[thrift.mike@epa.gov](mailto:thrift.mike@epa.gov)>; Smith, Kristi <[Smith.Kristi@epa.gov](mailto:Smith.Kristi@epa.gov)>  
**Subject:** FW: Notice of Intent Under 42 U.S.C. § 7604(b)(2); Failure to Issue a Finding of Failure to Submit a Nonattainment State Implementation Plan

FYI

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**From:** Donaldson, Guy <[Donaldson.Guy@epa.gov](mailto:Donaldson.Guy@epa.gov)>  
**Sent:** Tuesday, August 20, 2019 2:58 PM  
**To:** Feldman, Michael <[Feldman.Michael@epa.gov](mailto:Feldman.Michael@epa.gov)>; Garcia, David <[Garcia.David@epa.gov](mailto:Garcia.David@epa.gov)>; Jones, Bruce

<Jones.Bruce@epa.gov>; Olszewski, Joshua <olszewski.joshua@epa.gov>; Ling, Michael <Ling.Michael@epa.gov>; Mathias, Scott <Mathias.Scott@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>; Mocka, Corey <mocka.corey@epa.gov>; Snyder, Erik <snyder.erik@epa.gov>

**Subject:** FW: Notice of Intent Under 42 U.S.C. § 7604(b)(2); Failure to Issue a Finding of Failure to Submit a Nonattainment State Implementation Plan

FYI,

**From:** Joshua Smith <joshua.smith@sierraclub.org>

**Sent:** Tuesday, August 20, 2019 12:28 PM

**To:** Wheeler, Andrew <wheeler.andrew@epa.gov>; McQueen, Ken <McQueen.Ken@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Donaldson, Guy <Donaldson.Guy@epa.gov>

**Subject:** Notice of Intent Under 42 U.S.C. § 7604(b)(2); Failure to Issue a Finding of Failure to Submit a Nonattainment State Implementation Plan

Dear Administrator Wheeler,

Please accept the attached copy of Sierra Club's notice, under 42 U.S.C. § 7604(b)(2), of intent to file suit against the Administrator of the U.S. Environmental Protection Agency for the "failure of the Administrator to perform an[] act or duty under this chapter which is not discretionary with the Administrator." 42 U.S.C. § 7604(a)(2).

Specifically, the Administrator has violated 42 U.S.C. § 7410(k)(1)(B) by failing to issue a finding that Texas failed to submit a nonattainment state implementation plan ("SIP") within 18 months of the effective date of EPA's final nonattainment area designations under the 2010 Sulfur Dioxide ("SO<sub>2</sub>") Primary National Ambient Air Quality Standard ("NAAQS"), as required under 42 U.S.C. §§ 7502, 7514-7514a.

As discussed in the attached notice, Sierra Club would prefer to resolve this matter without the need for litigation. Quickly and fairly resolving this matter would be a clear indication that EPA intends to respect the rule of law. Therefore, we look forward to EPA contacting the undersigned counsel to resolve this matter. If we do not hear from EPA in 60 days, we will assume that you are not interested in settling this matter, and we will file a complaint.

A hard copy to follow, via certified mail.

Thank you,

Joshua Smith  
Senior Staff Attorney  
Sierra Club Environmental Law Program  
2101 Webster St., Suite 1300  
Oakland, CA 94612  
(415)977-5560  
(510)208-3140 (fax)  
(503)484-7194 (cell)

*I check e-mail infrequently. For urgent matters, please call.*

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